Supreme Court, U. S.
FILED
APR 1 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. 73-1462

MARK WHITE, ET AL.,
Appellants

V.

DIANA REGESTER, ET AL.,
Appellees

MARK WHITE, ET AL.,
Appellants

V.

JAMES GASKIN, ET AL.,
Appellees

MARK WHITE, ET AL.,
Appellants

V.

FRANK A. ESCALANTE, ET AL.,
Appellees

MARK WHITE, JR., ET AL.,
Appellants

V.

WANDA L. CHAPMAN, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

JOHN L. HILL
Attorney General of Texas

LARRY F. YORK
First Assistant Attorney General

ELIZABETH B. LEVATINO
Special Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711

April 1974

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

OPINION BELOW 1

JURISDICTION 1

QUESTIONS PRESENTED 3

STATUTE INVOLVED 4

STATEMENT 4

THE QUESTIONS ARE SUBSTANTIAL 8

I. By adopting an incorrect and unduly simplistic constitutional "checklist", and then selectively measuring bits and pieces of the record by that improper standard, the majority erred in declaring seven multi-member districts unconstitutional. 8

A. District 32, Tarrant County 20

B. District 7, Jefferson County 23

C. District 35, McLennan County 24

D. District 37, Travis County 26

E. District 75, Lubbock County 28

F. District 73, El Paso County 30

G. District 48, Nueces County 34

II. The evidence presented in this proceeding is insufficient to overcome the presumption of constitutionality of the Texas House of Rep-

resentatives Apportionment Plan and find an unconstitutional gerrymander of District 17 37

III. The preemption of the legislative function of reapportionment by the judiciary is unwarranted and improper when the legislature itself has not been given the opportunity to comply with a directive of the Court, no irreparable harm is shown, and when the remedial plans imposed are summarily chosen from among a number of alternatives offered without any findings relating to the standards utilized or any reasons for the choice 39

CONCLUSION 44

CERTIFICATE OF SERVICE 45

APPENDIX (separately bound)

A. Opinions of the lower court 1A

Majority Opinion 1A

Order of the Court 69A

Wood, District Judge, dissenting 72A

B. State Apportionment Plan, Representative Districts 133B

Amendments to State apportionment plan as ordered by Federal Court 148B

Amendment of Federal Court Order 168B

C. Stay Order of Justice Powell 172C

D. Order entered by Supreme Court overruling Motion to Vacate Stay 174D

TABLE OF AUTHORITIES

CASES: Page

Burns v. Richardson, 384, U.S. 73 (1966) 13, 15

Fortson v. Dorsey, 379 U.S. 433 (1965) 12

Graves v. Barnes, 343 F. Supp. 704 (W.D. Tex., 1972) 2, 17

Reynolds v. Sims, 377 U.S. 533 (1964) 3, 42

Smith v. Craddick, 471 S. W.2d 375 (1971) 38

Swan v. Adams, 385 U.S. 440 (1967) 3

Whitcomb v. Chavis, 403 U.S. 124 (1971) .3, 9, 10, 11, 13, 14, 15, 16, 18, 43

White v. Regester, 412 U.S. 755 (1973) 2, 3, 9, 10, 11, 15, 16, 17, 18, 38

White v. Weiser, 412 U.S. 783 (1973) 43

STATUTES:

28 United States Code, Section 1253 3

28 United States Code, Section 1343 2

28 United States Code, Section 2101 (b) 3

28 United States Code, Section 2281 2

Article III, Section 26, Texas Constitution 38

Article III, Section 28, Texas Constitution 1

This appeal is from the judgment of the United States District Court for the Western District of Texas, entered on January 28, 1974, in four of the seven consolidated actions challenging the districting of the State of Texas for the election to the Texas House of Representatives in nine districts. The decision of the Court below holds that (1) the districting of seven of these districts is constitutionally defective because they are multi-member districts which tend to unconstitutionally dilute the votes of Black and Mexican-American citizens in those districts and (2) the design of one district constitutes an impermissible racial gerrymander and works a deprivation of the constitutional rights of certain Black citizens. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINION BELOW

The opinion and order of the Court below are not yet reported. They were issued on January 28, 1974. They are reproduced in the separately bound appendix.

JURISDICTION

The actions below were originally brought by Plaintiffs Regester, et al. to enjoin enforcement of a statute of the State of Texas enacted by the Legislative Redistricting Board of Texas pursuant to Article III, Section 28 of

the Texas Constitution. Jurisdiction of the three judge district court was invoked under 28 USC §1343 and 2281. On January 28, 1972 the three judge court issued its opinion holding unconstitutionally high population variations in the House apportionment plan, and ordering the implementation of single-member districts in Dallas and Bexar Counties for the approaching 1972 elections. *Graves v. Barnes,* 343 F. Supp. 704 (W.D. Tex. 1972). That decision was appealed to the Supreme Court. On June 18, 1973, the Supreme Court reversed the lower court holding that the population variations were unconstitutional and affirmed that portion of the decision requiring single-member districts in Dallas and Bexar Counties. *White v. Regester,* 412 U.S. 755 (1973). The Supreme Court then remanded the case for further proceedings in conformity with the opinion of the Court. On remand, the original Plaintiffs Regester as well as Plaintiffs Escalante, Gaskin, and Chapman sought to enjoin the enforcement of the apportionment statute for the State of Texas into representative districts in nine multi-member districts. Intervention was allowed in the original and new suits. The three new actions were consolidated with the original proceedings, a three judge court was appointed, and that court issued its opinion on January 28, 1974 implementing plans for single-member districts for 1974 elections and denying a stay. Notice of Appeal was filed January 30, 1974 in the United States District Court for the Western District of Texas, Austin Division.

Application for a stay of that portion of the lower

court's judgment immediately implementing single-member district plans in seven districts (Districts 7, 32, 35, 37, 48, 72, and 75) was presented to Mr. Justice Powell and granted by him on February 2, 1974 without opinion. (Exhibit C.) A motion to vacate the stay was denied by the Supreme Court on February 7, 1974 without opinion. (Exhibit D.) The jurisdiction of this Court to review the judgment of the District Court is founded on 28 USC §1253 and 2101(b). Jurisdiction is supported by *Swan v. Adams,* 385 U.S. 440 (1967), *Reynolds v. Sims,* 377 U.S. 533 (1964), *Whitcomb v. Chavis,* 403 U.S. 124 (1971), and *White v. Regester,* supra.

QUESTIONS PRESENTED

I. WHETHER OR NOT THE MAJORITY ERRED BY ADOPTING AN INCORRECT AND UNDULY SIMPLISTIC CONSTITUTIONAL "CHECKLIST", AND THEN SELECTIVELY MEASURING BITS AND PIECES OF THE RECORD BY THAT IMPROPER STANDARD TO DECLARE SEVEN MULTI-MEMBER DISTRICTS UNCONSTITUTIONAL.

II. WHETHER OR NOT THE EVIDENCE PRESENTED IN THIS PROCEEDING IS SUFFICIENT TO OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY OF THE TEXAS HOUSE OF REPRESENTATIVES APPORTIONMENT PLAN AND FIND AN UNCON-

STITUTIONAL GERRYMANDER OF DISTRICT 17.

III. WHETHER OR NOT THE PREEMPTION OF THE LEGISLATIVE FUNCTION OF REAPPORTIONMENT BY THE JUDICIARY IS UNWARRANTED AND IMPROPER WHEN THE LEGISLATURE ITSELF HAS NOT BEEN GIVEN THE OPPORTUNITY TO COMPLY WITH A DIRECTIVE OF THE COURT, NO IRREPARABLE HARM IS SHOWN, AND WHEN THE REMEDIAL PLANS IMPOSED ARE SUMMARILY CHOSEN FROM AMONG A NUMBER OF ALTERNATIVES OFFERED WITHOUT ANY FINDINGS RELATING TO THE STANDARDS UTILIZED OR ANY REASONS FOR THE CHOICE.

STATUTE INVOLVED

The statute involved is the Apportionment of The State of Texas Into Representative Districts, as enacted by the Legislative Redistricting Board. This statute is not published. It is printed in the appendix.

STATEMENT

This case involves an attack on the constitutionality of the Texas plan for apportionment of the Texas House of Representatives. The Texas House of Representa-

tives is composed of 150 members. The average district for the Texas House of Representatives is 74,645 people. All 31 members of the Texas Senate are elected from single-member districts. Thirty-one members of the House are elected from multi-member districts, varying in population from 675,000 to 147,000 residents. They are located in every geographical area of this State—West Texas, North Texas, South Texas, East Texas and Central Texas. The characteristics of these districts vary greatly, not only in population, but also with regard to the percentage of racial or ethnic population, political processes within the districts, rural and urban nature, culture and background. The following chart shows the demographic features of these districts.

District	Number Of Representatives	MINORITY POPULATION Blacks	%	Mexican American	%	Total	%	Total Population
32 Tarrant	9	81,059	12	40,529	6	121,588	18	675,499
72 El Paso	4	8,338	2.8	169,133	56.8	177,471	59.6	297,770
37 Travis	4	35,462	12	5,910	20	41,373	32	295,516
48 Nueces	3	94,624	43	11,003	5	105,626	48	220,056
7 Jefferson	3	55,239	25	9,959	4.5	55,287	29.5	221,314
19 Galveston	2	30,042	20	—	—	30,042	20	150,209
75 Lubbock	2	10,341	7	23,636	16	33,977	23	147,722
35 McLennan	2	25,084	17	10,329	7	35,413	24	147,553
59 Hidalgo	2	—	—	115,996	80	115,996	80	144,995

The Court below found seven of these nine multi-member districts unconstitutional. The Plaintiffs were forced to concede at trial that they were unable to produce evidence to prove that the two-place multi-member districts in Hidalgo County, District 59, and Galveston County, District 19, operated in any way to deny racial or ethnic groups access to the political process.

With regard to District 19, Galveston County, however, the Court did find that in drawing the Reapportionment Act in 1971, the Legislative Redistricting Board removed 20,000 residents from the then existing multi-member District 19 and placed these residents in District 17, a district including adjoining Chambers County and portions of Harris County. These 20,000 citizens reside in Galveston County census tract 1219. Approximately 5,500 Blacks reside in this census tract. The Court found that this removal of census tract 1219 from District 19 constituted a gerrymander for the purpose of minimizing the political power of Blacks in violation of the Fifteenth Amendment. Although the Court declared the present plan unconstitutional, it did not issue an injunction or any other affirmative relief with regard to this district. The Court retained jurisdiction if the legislature failed to remedy the constitutional deficiencies before July 1, 1975.

THE QUESTIONS ARE SUBSTANTIAL

I.

BY ADOPTING AN INCORRECT AND UNDULY SIMPLISTIC CONSTITUTIONAL "CHECKLIST", AND THEN SELECTIVELY MEASURING BITS AND PIECES OF THE RECORD BY THAT IMPROPER STANDARD, THE MAJORITY ERRED IN DECLARING SEVEN MULTI-MEMBER DISTRICTS UNCONSTITUTIONAL.

By adopting an incorrect and unduly simplistic constitutional "checklist", and then selectively measuring bits and pieces of the record by that improper standard, the majority below bootstrapped its way to a conclusion that seven of Texas' remaining nine multi-member districts were unconstitutional. The two districts spared were conceded even by plaintiffs to be constitutional.

The majority's insistence on this legally and factually wrong approach compelled Judge Wood to write a strong dissent differing with the majority on all issues, thus splintering the unanimity of the same Court which had two years earlier without dissent condemned the multi-member district of Dallas and Bexar Counties.

In succumbing to the temptation to find a way out of the "political thicket" by attempting to fashion a precise chart from the properly general guidelines set out

by the Supreme Court, the majority has gotten its legal cart before the horse. Paying lip service to the general standard fixed by the Supreme Court, the majority lists certain specific factors devised to evaluate that general test, and in the end no longer views that list of factors as merely a list of evidence, but as a test in itself—one that bears little resemblance to the only test enunciated by the Supreme Court.

The "aggregate of factors" relied upon by the majority is both internally inconsistent in its logic and wrong in its application of the standards laid down in *Whitcomb* and *Regester*. The majority's checklist contains four "factors":

> (1) Restricted access of minority groups to the slating of candidates for particular party nominations;
>
> (2) The consistent use of racist campaign tactics to defeat minority candidates or those championing minority concerns;
>
> (3) The indifference or hostility of the district-wide representatives to particularized minority interests; and
>
> (4) The inability of minority groups to obtain representation in proportion to their percentage of the district population. (7A)

Inconsistent in its internal logic, the majority's "aggregate" results in the awarding of "bonus" factors if some of the first factors are found in favor of the plain-

tiffs. Thus, if a successful attempt is made to restrict the minority's access to the "slating" of candidates (#1), then presumably the result would be that candidates so selected would be both indifferent to the needs of the minorities (#3) and would not consist of members of the minority (#4). In this instance, if a plaintiff were able to show the first factor, he would presumably win, as a bonus, factors three and four. Further, if a plaintiff were to be able to show the consistent successful use of "racist" campaign tactics (#2), those tactics would presumably result in the selection of candidates who were indifferent to the needs of minorities (#3), and not themselves members of the minorities (#4). Again, the finding of factor number two results in a bonus of factors three and four.

But more importantly, the majority erred in using a "checklist" that applies factors which have never been recognized by the United States Supreme Court as appropriate.

Nowhere in *Whitcomb, Regester,* or the other cases, does the Supreme Court suggest that the "consistent use of racist campaign tactics" is an appropriate standard to judge constitutionality of a multi-member district. As pointed out by Judge Wood in his dissent, it is necessary to any conclusion of unconstitutionality of multi-member districts (versus single-member districts) to conclude that single-member districts would have the result of eliminating the constitutional evil

seen in the multi-member district. Drawing the legislative district lines could hardly be thought to be likely to end racial prejudice. Indeed, it was never suggested in the record of this case that racial prejudice would be eliminated by the adoption of single-member districts, and in fact, in the one district where the issue was raised (District 7), plaintiff's counsel conceded that the adoption of a single-member district would not result in the elimination of the racial prejudices complained of.

With regard to the "indifference or hostility" of the district-wide representatives to particularize to minority interests, it should be pointed out first of all that the record, and the majority's opinion, contains no evidence or conclusions as to what the specific interests of minorities *are*. Beyond that, it should be noted that the Supreme Court has never recognized this as an appropriate standard for determination of constitutionality of a multi-member district. In *Whitcomb,* the Supreme Court merely noted that the district court had found this sort of unresponsiveness, and, concluded that there was no evidence to support that conclusion and went on to reject this "factor" as constitutionally relevant. In *Regester,* the Supreme Court made absolutely no statement with regard to Dallas County concerning the responsiveness of a delegation. With regard to Bexar County, the Supreme Court merely noted, without comment, that the district court had found such unresponsiveness. Such mentions in passing by the Supreme Court in light of the strong language of *Whitcomb,* cannot fairly be taken as an expression by that court

that responsiveness of the elected representatives is now an appropriate factor to form part of the test of constitutionality of a multi-member district. Evaluation of the motivations of the individual representatives simply cannot be fairly made without understanding the totality of the political process in which they are involved, and for a court to attempt to make use of such a standard to determine constitutionality of a multi-member district is to require the Court to speculate on matters so remote that even political scientists and writers who spend their lives doing nothing but evaluating the relative degree of liberality or conservatism between various politicians disagree on the results of their evaluations.

Throughout consideration of this issue, the Supreme Court has consistently declined to hold multi-member districts unconstitutional per se. The Court has also affirmatively stated that multi-member districts are not unconstitutional even when used in conjunction with single-member districts thereby obviating any need for a State to justify its choice of this combination. To do otherwise would deny the undisputed fact that the practical political processes within any given district operate in a manner unique to that district, even though the statutory framework is uniform throughout. The Court therefore has developed a very general standard against which the totality of the political nature of a district must be measured.

Beginning in 1965 with *Fortson v. Dorsey,* 379 U.S.

433 (1967), the Supreme Court indicated that based on the entire record, a multi-member district could be found in violation of the Fourteenth Amendment, but rejected the challenge before it. The following year in *Burns v. Richardson,* 384 U.S. 73 (1966), the Court affirmed *Fortson,* supra, as controlling in this area. The Court recognized that invidious discrimination could be more easily shown if districts were large in relation to the total number of legislators, were not subdistricted to provide for geographical residence of legislators over the entire district, or characterized both houses of a bicameral legislature. However, these circumstances were never intended by the Court to constitute a "checklist" where a finding of one or more would alone result in unconstitutionality. While appropriate to consider objective data, such as size of districts, number of legislators, and the other *Burns* criteria, as bearing on constitutionality, the use of these factors in a "checklist" manner was clearly rejected by the Court in *Whitcomb.* Indeed, as pointed out in Justice Douglas' dissent all the *Burns'* criteria existed in the Marion County multi-member district. However the majority while acknowledging that the circumstances initially described in *Burns* would have a tendency to cause invidious discrimination,

> "we have insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements." *Whitcomb v. Chavis,* supra, at page 144.

To determine whether or not this burden had been satisfied in *Whitcomb,* the Court made an exhaustive study of the record in the case. There the Supreme Court found that the lower court had actually "misconceived the equal protection clause in applying it to invalidate the Marion County multi-member district." *Whitcomb v. Chavis,* supra, at page 160. The "misconception" of the trial court was that it reasoned that invidious discrimination resulted because the identifiable group within the multi-member district was unconstitutionally under-represented since the proportion of legislators with residence in the ghetto was less than the ghetto would likely have elected had the county consisted of single-member districts. *Whitcomb v. Chavis,* supra, at page 148. The district court also based its decision on the theory that partial response of all legislators of a district is not equal to total responsiveness or undivided allegiance of a specific few legislators. This theory was also seen as an inadequate basis for invoking constitutional remedies. That ghetto residents had unique interests not necessarily shared by others in the community and therefore they were invidiously under-represented absent their own legislative voice to further their own policies was rejected by the Supreme Court as constituting a violation of the Fourteenth Amendment. *Whitcomb v. Chavis,* supra, at pages 154-156. While the type of representation shown by a candidate or party is generally a reflection of the desires and wishes of those voters electing such candidate or party, representation has been legally held to be a function of election.

And as set out above

> "the mere fact that one interest group or another concerned with the outcome of . . . elections has found itself outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, . . . , there, is no indication that this segment of the population is deemed denied access to the political system." *Whitcomb v. Chavis,* supra, at pages 155-156.

The burden of the challenger of a multi-member district then as set out by *Whitcomb* and reiterated in *White v. Regester,* supra is

> "to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice. *Whitcomb v. Chavis,* supra, at 149-150." *White v. Regester,* supra, at page 10.

While rejecting the reasoning and findings of the lower court in *Whitcomb,* the Supreme Court did indicate some evidence in addition to the *Burns'* criteria which would be appropriate to consider for Fourteenth Amendment purposes. The first of these would undeniably be evidence that a state utilized a multi-member district as a purposeful device to further racial or economic discrimination. *Whitcomb v. Chavis,* supra, at page 150. Secondly, as recognized by Judge Wood's dissent, the standard of *Whitcomb*:

"specifies that courts should take special note of districts where the minority is not allowed (1) to register to vote, (2) to choose the political party they desire to support, (3) to participate in the affairs of the political party they desire to support, (4) to be equally represented on those occasions when legislative candidates are chosen by the party they chose to support, or (5) are regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats." (75A)

This type of evidence clearly speaks to the question of access to the political process—the proper standard of constitutionality. With the decision in *White v. Regester,* the Supreme Court indicated that an additional area of proper inquiry by a court considering the constitutionality of a multi-member district would be the continuing effects of official past discrimination on a minority group's ability to participate in or have access to the political process. In *Regester,* the Supreme Court was of the opinion that the lower court had properly applied the *Whitcomb* standards and found that the multi-member districts in Dallas and Bexar Counties operated to effectively exclude the minority within each district from participation in the political processes in those districts. The lower court found a history of official racial discrimination relating to the rights of Blacks to register, vote, and participate in the democratic processes for Democratic party primaries. Characterized as fundamental by the Supreme Court was a finding of tight control of the recruiting and slating process in Dallas by the Dallas Citizens for Responsible

Government and elimination of the Blacks in the district from this process. As noted by the Supreme Court, as to Bexar County the holding of the lower court was based on the totality of circumstances. Interestingly, an examination of the lower court's opinion (*Graves v. Barnes,* supra), is strikingly different than the one issued in the case at bar. In the prior opinion there was no attempt to utilize a "checklist"—rather the overall picture was evaluated strictly in terms of access to political process. Also, the lower court two years ago properly recognized that findings of de jure discrimination were necessary as they specifically so found in Dallas and Bexar Counties. *Graves v. Barnes,* supra, at pages 725 and 728. Yet two years later, the majority, as pointed out by Judge Wood, felt it could dispense with such findings.

It is also clear that certain conditions inherent in a state-wide multi-member districting scheme are not sufficient alone to make that scheme unconstitutional. Texas' multi-member districts do not require residency of candidates in geographical subdistricts, all districts utilize the "place system" and a majority vote requirement. The Supreme Court in *Regester,* specifically declined to base a finding of unconstitutionality on these factors alone. Indeed, to do otherwise would have resulted in a conclusion that the Texas scheme was unconstitutional per se. Similarly, the history of official racial discrimination in Texas, which the Court found in *Regester* to have existed, would presumably affect

the entire State, but again this finding along or in conjunction with the above factors could not support a finding of unconstitutionality as to a specific district. Even the majority of the court below acknowledged that these state-wide conditions are insufficient, standing alone. (7A)

As evidenced by the majority and dissenting opinions of the lower court, it is not clear whether or not a finding of *de jure* disenfranchisement of a minority is necessary to sustain a constitutional attack on a multi-member district. In upholding the multi-member district in *Whitcomb,* supra, the court stated at page 149:

> "But there is no suggestion here that Marion County's multi-member district, or similar districts throughout the State, *were conceived or operated as purposeful devices* to further racial or economic discrimination." (Emphasis added.)

As pointed out by Judge Wood, the court in *Regester,* supra, stressed the history of official racial discrimination in Texas, and that the Mexican-Americans in Bexar County were denied political access when

> "cultural incompatibility was *conjoined* with the poll tax and the most restrictive voter registration procedures in the nation to dilute the Chicano vote." (79A)

Given these precedents, one who challenges a multi-member district must produce a preponderance of credible evidence showing that in each community

the combination of a multi-member district with the nature and operation of political and cultural activity and processes unique to that community, clearly precludes a minority in that community from equal opportunity to participate in the political process and electing legislators of their choice.

The United States Supreme Court has been presented with several controversies concerning multi-member districts, but on only one occasion has it condemned their use. The smallest multi-member district condemned by the Court, Bexar County, Texas, contained over 800,000 people, and elected 11 representatives to the Texas House of Representatives. The multi-member district for Dallas County, also condemned by the Supreme Court, had in excess of 1,300,000 population and elected 18 representatives. The Supreme Court refused to hold unconstitutional a multi-member district in Marion County, Indiana which had a population of 741,234. The district elected eight of 50 senators and 15 of 100 representatives.

As set out above, this case is a challenge to the use of multi-member districts in seven counties ranging from one district with a population of 675,499, electing nine members to the Texas House of Representatives, to districts electing only two representatives having an approximate population of 150,000. The obvious disparity in the size of these districts, their impact on state government, and the remedial effects of single-member plans in small districts cannot be ignored in the view of

the Supreme Court, although the majority below attempts to do so.

The following discussion highlights some of the areas in which the district court erred in its characterization of the evidence before it, even as applying it to the majority's incorrect legal standard, and more importantly, how the evidence cannot be sufficient to support a conclusion of unconstitutionality when the Supreme Court's test is applied.

A. DISTRICT 32, TARRANT COUNTY

No slating has been shown to exist in Tarrant County which restricted minority access—totally unlike that found to have existed in Dallas County. Slating and endorsement of candidates for legislative races is, however, undertaken in a formal manner by the Tarrant County Central Labor Council, the Precinct Workers Council, and PASO. The record also speaks of the "Seventh Street Group" presumably being a business oriented, conservative political organization. Testimony concerning the activities and publication of the latter, while conflicting, revealed no proof of formal slating or endorsing procedures or "slate cards". The majority found powerful interests "slating" candidates without consulting minority representatives and without reference to minority interests, and ". . . that a candidate not slated has virtually no hope of election." (18A)

Yet the record shows that the Tarrant County Cen-

tral Labor Council normally enjoys the vote and support of the Black community for their candidates. They supported Black candidates in 1968 and 1972. As pointed out by the dissent

> "In 1972, the Labor Council combined with the other political organizations to screen party nominees. Among those groups, it is interesting to note that PASO, a Mexican-American organization, and the Precinct Workers Council, a Black organization were included. These political groups endorsed Mr. Bobby Webber, a Black, among others though his race was not targeted to win." (88A)

Mr. Webber received approximately 46% of the vote cast, a fact discounted by the majority. Totally unlike Dallas County, the endorsement of any one of these four groups did not insure victory. A state representative from Tarrant County testified that in his political experience there was no group of "king-makers" in Tarrant County (90A); Plaintiffs' witness, J. W. Sifford, a Tarrant County labor leader also testified that the candidates endorsed by one particular organization were not assured of winning. (Sifford deposition, page 106.)

The majority also found a "clear pattern of unresponsiveness" to the needs of the minorities by the legislative delegation. In support of this finding the majority establishes a requirement of affirmative initiation of legislation in addition to votes on particular bills as the criteria. While stating that the delegation displayed indifference in areas characterized by the majority as having particular interest to minorities, they cite no

instance where a member of the delegation expressed such indifference or any instance where a member refused to act in one of these areas when requested. The failure to do so stems from the fact that the record contains no such evidence. On the other hand as shown by dissent:

> " . . . it should be pointed out that most of the Tarrant County delegation voted for an 'open meeting' bill, bi-lingual education, posting of prices for prescription drugs (introduced by Mr. Leland, a Black representative), licensing requirements for child care centers, and a crime and narcotics educational program. (See Lewis deposition, page 192-199) Obviously, these legislative enactments have appeal to minority interests as well as to Tarrant County as a whole. There was no evidence analyzing the entire history of the last legislative session, but a cursory glance does not indicate of which they are accused in the majority opinion. The racial connotation in the statement that one legislator voted against the creation of a State holiday honoring Dr. Martin Luther King pales by the fact that he favored instead a holiday in memory of Lyndon Baines Johnson, President of the United States from Texas." (91A)

In summary, while the majority feels it has found an aggregate of its factors sufficient to support its holding of unconstitutionality, the evidence is conflicting at best on some points and actually refutes any finding of lack of access to the slating of candidates for particular party nominations. The record conclusively shows that the minority groups are quite politically active, including activity in the established political party machinery.

B. DISTRICT 7, JEFFERSON COUNTY

This district contains approximately 221,000 people, elects three members of the House of Representatives, and has a Black population of approximately 30%.

The majority, while heavily emphasizing past problems of discrimination in labor unions, schools, and some other areas, as a basis for its findings, ignores entirely the admission by plaintiff's attorney that none of these conditions would have been changed by single-member districts in Jefferson County. (95A)

The findings of the majority with regard to the slating or endorsing of legislative candidates to support their holding are contradicted by the record. The major and only recognized endorsing grouping in District 7 is the Committee on Political Education (COPE) of the Sabine Area Labor Council. The majority characterizes an endorsement by this group as "tantamount to election" (21A). Yet two of the present three member delegation were elected without that endorsement. (95A) No "extra-ordinary personality conflicts" cited or found in the record divided the labor vote in those races. The majority states no Black has appeared on the COPE slate. (22A) COPE, however, in 1970 listed three candidates for one race acceptable, one of them being Mr. Price, a Black man (95A). Mr. Price has been the only Black to run for the Democratic nomination for the Texas House of Representatives. Although coming in

third in his 1972 race, this was only approximately 2,400 votes behind the leader out of over 20,000 votes cast. Additionally, the majority also apparently felt that the fact that Blacks have been elected on a district-wide basis to city council and school board posts is of no moment in gauging access to political activity and success at the polls, although this is used in other districts.

The majority again finds the legislative delegation insensitive and unresponsive to the particularized needs of minorities. The only basis for this finding appears to be lack of social contact with Blacks and one member's unawareness of the degree of segregation in the Beaumont public schools. (23A) The record however reflects appearances and requests to appear at the functions of the Black community by members of the delegation. It is also pertinent that the member unaware of the degree of Beaumont's school problems is a resident of Port Arthur, the other city included in District 7.

> "The increasing political activity of the minority community combined with the lack of evidence to the contrary confirm a finding that the plaintiffs have failed to carry their burden in challenging the existing multimember district. Plaintiffs have, in effect, admitted that a change to a single-member district plan might very well achieve nothing." (95A-96A)

C. DISTRICT 35, MCLENNAN COUNTY

This district contains 147,533 people, elects only two

representatives, and has approximately 16% Black and 7% Mexican-American population.

The existence of a history of racial discrimination or racially biased attitude is claimed by the majority. However, the effect of history in the operation of the multi-member district is the issue. "Plaintiff's burden is to show more than a history of racially bias attitudes in District 35." (96A)

No formal slating system exists in this district. (26A) No member of a minority has evern run for a legislative seat in this district. However, the record reflects, although ignored by the majority, that Blacks are in a position as a swing vote in close elections, and are quite active in political structure, holding many precinct positions. (99A) There is no evidence of consistent use of racist campaign tactics. The majority again applies the test of a record of affirmative legislative initiative as opposed to indifference or hostility to the particularized minority interests. (27A-28A) While this is not even the proper test, the record again reveals otherwise. Initially, plaintiff's witness had some difficulty identifying these areas of particular minority interest, as well as awareness of the delegation's general voting trends. (See Gilbert deposition.) In fact, Plaintiff's counsel admitted the voting record of a recent member of the delegation was excellent. (99A)

Finally, the majority opinion poses an interesting contradiction. Waco city elections were conducted by

wards in 1948. In 1950 a Black was almost elected from one ward. The council then reverted to voting at-large. As pointed out by the dissent:

> "In spite of such evidence, the majority takes the position that institution of this system, which has produced two Black City Councilmen in the last two elections, is 'curious' on the one hand and ample evidence of the desirability of single member districts on the other." (97A)

Here, again, the majority has made findings of its "four factors" based on selected parts of the evidence and by reference to past attitudes of racial bias in District 35. This is insufficient.

D. DISTRICT 37, TRAVIS COUNTY

This district consists of approximately 300,000 people, elects four members to the Texas Legislature, and has a minority population of approximately 20% Mexican-American and 12% Black.

It is agreed that no formal slate-making groups exist in Travis County. While the majority wrongly views the local control of the Democratic Party as being held by a "coalition of Austin businessmen and State Capitol lobbyists" (29A), the record clearly indicates that members of minority groups have been quite successful in gaining access to the workings of the Democratic Party, and have secured several party offices. (101A-102A) The record additionally reflects that, although there are no

formal slating groups controlling the district, the number of endorsing groups are made up of minorities, and that the endorsing groups existing in District 37 have endorsed both Black, Mexican-American and White candidates regardless of the racial make-up of the endorsing group. No Black has ever sought the Democratic nomination for the legislature, although a Black is now serving his second term on the City Council and a Black woman has been a member of the school board since 1968—both of these races being district-wide. Two Mexican-Americans have been candidates for the Texas Legislature. As the dissent points out (102A) the Mexican-American candidate ran against a 14-year incumbent and actually came within 1,000 votes of winning out of the 80,000 votes cast.

The majority speaks of evidence of an indifference to the serious problems confronting the minority interests in this district, without citing any one example of such indifference. Plaintiff's witness, Representative Sarah Weddington, expressed concern that the minority groups were not given the attention to which she felt they were entitled. However, again, as pointed out by the dissent:

> "A close appraisal of her testimony reveals that rather than out of fear of alienating some other part of her constituency, her difficulties arise from the same problem plaguing all other legislators—the voluminous workload of the Legislature (Trial Transcript, pages 503-505). In addition, Ms. Weddington testified that the other members of the

> District 37 delegation feel a definite commitment to the needs of the minority community (Trial Transcript, page 510)." (102A-103A)

The majority finds "virtually every factor present in Dallas and Bexar County multi-member district" also present in District 37. (32A) However, there is no formal slating system in District 37, as there was in Dallas; District 37 is approximately one-third the size of the Bexar County District, one-fourth the size of the Dallas District; the percentage of minority population is much less than that in Bexar County and represents much fewer people than that in Dallas County. The representation and sensitivity of the delegation to the needs of the minority interests in District 37 clearly cannot be categorized as identical with that of Dallas and Bexar County delegations.

E. DISTRICT 75, LUBBOCK COUNTY

This district has a population of approximately 147,722 people, elects two representatives, and has approximately 7.4% Black population with 17.33% Mexican-American.

Of the six pages devoted by the majority opinion to this district, fully four deal almost exclusively with evidence of past and recent discrimination and on the socio-economic condition of the Mexican-American minority in the county. As recognized by the dissent, "little, if any, evidence is shown in the record, and none

is referred to by the majority, which indicates that the minority in District 75 has been prevented effective access to the political process." (104A) Unless transferred to the political processes, this evidence of past discrimination is not sufficient to hold unconstitutional a multimember district.

Plaintiffs concede that there is no slating of candidates for party nomination and therefore there is no restriction of access of minority groups. Again, as the dissent points out, although minority groups have not run for legislative office, they have run and won on other district-wide races, such as the county school board. In 1972, a Mexican-American ran for the school board and in a four man race lost by only 250 votes. (104A-105A)

The majority does not discuss at all the representation received by minority interests from the elected delegation. The dissent, on the other hand states:

> "The evidence shows further that the voting records of delegates from District 75 support a finding that these delegates have generally voted for issues presented to them along the same line as Mexican-American and Black legislators." (105A)

The majority has again ignored its own standards for determining constitutionality and relied almost exclusively on a discussion of cultural and historical circumstances unrelated to the political and constitutional questions posed in this case.

F. DISTRICT 73, EL PASO

This district has a population of approximately 297,700 people, elects four representatives to the House of Representatives and has approximately 56.8% Mexican-American population with the Black population approximating 2.8%.

The majority was unable to make findings of even its own "factors" and thus its holding of unconstitutionality in this multi-member district is unfounded. The fact that no slating system exists in El Paso for party nominations in legislative races is conceded by plaintiffs. (112A) While the majority attempts to use the existence of a slating system as evidence of non-access to city council races, they also admit that Mexican-Americans are and have been part of the non-partisan slate. Additionally, Mexican-Americans have been elected to offices at practically every level of government in El Paso—mayor, county commissioners, district judges, justices of the peace, constables, and judges of Domestic Relations Court, County Court at Law, and Corporation Court. (111A-112A) No evidence of slating systems exists with regard to these other offices.

The consistent use of racist campaign tactics was supported, the majority felt, by a reference to a so-called "whisper campaign", the extent or contents of which were never determined. The majority refers to one statement made by a state's witness (the only

Mexican-American testifying with regard to El Paso) regarding a racially-based campaign for mayor. The majority ignored parts of the testimony of Plaintiff's witnesses (the chairmen of the Democratic and Republican Parties in El Paso County) although it did not escape Judge Wood. They testified that no overt racial campaigning was used in El Paso. (107A-108A)

To support the third factor, indifference or hostility of the legislative delegation to particular minority interests, the majority presents a curious contradiction. Citing only the testimony of one former State legislator, his singular vote against the repeal of the poll tax over ten years ago at a time when his district encompassed many rural counties is found to outweigh even his "affirmative action" in proposing legislation (a factor actually used by the majority in other districts) to provide for bi-lingual education in elementary grades. This witness also expressed his awareness of the Mexican-American community and the need for their continued support to achieve victory at the polls. The only remaining evidence in the record bearing on this issue was Defendant's exhibits 13 through 32, voting records on selected legislation considered by the most recent Regular Session of the Texas Legislature. These exhibits show that the El Paso delegation was generally aligned in their voting with the Black and Mexican-American members of the Texas House of Representatives. This evidence apparently was considered irrelevant by the majority.

The final factor, proportional representation of minorities, apparently is found by the majority when they state none of the elected Mexican-Americans live in the "barrio" section. This finding pales considerably in light of the fact that the preponderance of evidence does not indicate any elected official was unresponsive or neglectful of the minority interests. Secondly, as regards the "barrio", the information regarding the area is succinctly discussed by Judge Wood:

> "The testimony by the expert witness and others as regards the disadvantaged South side of El Paso is hardly the fact filled type of evidence originally presented to this Court on Bexar County which was replete with Civil Rights studies and reports on specific income tabulations, living conditions, educational achievements ad infinitum to provide a complete picture of the Bario area. Simply to say that there is a concentration of Chicanos in one area of the City combined with the unsubstantiated and subjective statements that they are disadvantaged should not be the sort of compelling proof for this Court to draw the parallel to the San Antonio Bario." (110A-111A)

Finally, the majority injects a new factor to support its holding—that of the cost of running for election district-wide, as contrasted with single-member districts. Citing the non-use of television by candidates for county commissioners races, the court concludes that this "has probably contributed," to the fact that Mexican-Americans have been elected on four occasions to the State legislature but 17 times to the Commissioners' Court. Even if this was an appropriate consideration, the totally speculative nature of the majority's finding is clearly inappropriate as a basis for determining significant constitutional issues. The record itself reflected the unreliability of campaign costs in this area.

> "The plaintiffs also presented the elected Chairmen of the Democratic and Republican Parties to substantiate Dr. Cotrell's ultimate findings. Both witnesses testified that campaign expenditures for a State legislative seat amount to $15,000-$20,000 in the present multimember district. Although no witness testified that minority candidates had been unable to raise such amounts, the political Chairmen opined that single member districts would lower campaign costs and encourage more Mexican-American candidates.[4]"
>
> " . . . [4]In District 72 (El Paso) the four successful Candidates spend amounts ranging from $17,000 to $3,000, indicating that Campaign costs vary so much even within a given multimember district as to be an unreliable barometer of constitutionality." (107A)

None of the evidence presented relating to El Paso County indicates that Mexican-Americans have not been active in the political process because of multi-member districts, but on the contrary the success of Mexican-Americans obtaining State Representative offices through the past ten years strongly indicates that the multi-member district cannot and does not operate to unconstitutionally dilute, disenfranchise, or provide unequal access to the political process to Mexican-Americans in El Paso County.

G. DISTRICT 48, NUECES COUNTY

This district has approximately 220,056 people, elects three representatives to the Texas House of Representatives; approximately 43% of the district's population is Mexican-American, and 5% is Black.

This district, like El Paso, is one with a high percentage of minority population and an impressive record of minority participation and success in the political arena. In holding the use of a multi-member district to be unconstitutional in Nueces County, the majority seemingly ignores the political activity and success of the minority residents of this district. While relying on the relative success of a minority in races *other* than legislative races in Lubbock County, the majority fails to even mention the clear undisputed success of minority members in races other than legislative in Nueces County. This success includes election to the city council, district clerk's office, county court at law judges, county commissioners courts, justice of the peace, and constables. (117A) The majority discounts the success of the Mexican-Americans in legislative races (the delegation has included at least one Mexican-American in every term but one since 1965), by stating that this success does not reflect "comparable legislative success in terms of response to the particularized needs to Mexican-Americans." (50A) Now the majority sees one of its factors is more significant than another factor. Relying primarily on the testimony of Mr. Carlos

Truan, a State Representative from District 48, the majority is only able to point out the fact that in Representative Truan's opinion, single-member districts would allow him to devote more exclusive time to the interests of the minorities. Mr. Truan does acknowledge that other members of his delegation have proposed and voted for legislation of interest to the minority, but apparently feels it is more significant, a conclusion joined by the majority, that such members of the delegation could not have *empathy* with the needs of the minority. It is respectfully submitted that in light of the entire record the delegation's concern for minority interests and affirmative actions to promote that interest are readily apparent. The acceptance of non-minority members of the delegation by the minority is also clear and pointed out by the citation received by Representative Hale from the United Latin American Citizens (LULAC) for his efforts in advancing legislation vital to the particularized needs of that constituency. (118A)

It was conceded by Plaintiff's witness at the trial that there was no slate-making group in operation on the legislative level in Nueces County.

The majority spends considerable time attempting to show the use of racist campaign tactics to defeat a minority group. The most recent cited example of subtle racist tactics allegedly occurred in 1971. In 1971, the race was for election to the city council and this example of racists campaign tactics appears to be completely

concerned with the issue of busing in this community. (50A) As pointed out by Judge Wood, the issue of busing within a given community relates to many factors other than merely racial fears. As Judge Wood points out, the system of forced busing to achieve a racially balanced school has been generally unpopular with many segments of our society and very few seem to like or want it. (115A-116A)

The success of minority candidates at the polls in Nueces County seems to belie any successful racist campaigning.

Lastly the majority bases its holding on a finding that "Representative Truan lost much of his prior support in the election of 1972 because of Anglo resentment stemming from his legislative proposals relating to the interests of Mexican-Americans." (52A) However, as pointed out by the dissent, there were several circumstances affecting the last election of Mr. Truan, including a publicized dispute between Mr. Truan and the Bishop of Corpus Christi and the effect of redistricting on Mr. Truan's district between the 1968 and 1972 election. Mr. Truan grew up in Kleberg County and had carried it almost unanimously in previous elections. Through legislative redistricting all of Kleberg County was removed from a multi-member district and such a change in constituency would undeniably have an impact on Mr. Truan's margin of victory. (118A-119A)

A holding that the use of a multi-member district in District 48 has operated to deny any minority group less access to the political process and the right to elect legislators of their choice than afforded residents of the district so as to order their use unconstitutional is legally erroneous in light of the record before the Court whether utilizing the factors propounded by the majority or any other constitutionally relevant factors.

II.

THE EVIDENCE PRESENTED IN THIS PROCEEDING IS INSUFFICIENT TO OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY OF THE TEXAS HOUSE OF REPRESENTATIVES APPORTIONMENT PLAN AND FIND AN UNCONSTITUTIONAL GERRYMANDER OF DISTRICT 17.

The majority of the lower court found that District 17 (Galveston County) was impermissibly racially gerrymandered because it did not include a census tract (Census Tract 1219) comprised of 20,000 people of whom 5,500 were Black, which tract had previously been part of District 17. The majority acknowledged that this decision of constitutionality was based solely on the opinion of one legislator and a scintilla of circumstantial evidence—the appearance of the district and population statistics. (56A) Although plaintiff's counsel stated at trial that more detailed analysis of the effect of

the "gerrymander" would be forthcoming through briefs, none materialized. This "dearth of evidence" is clearly insufficient to overcome the presumption of constitutionality given a state statute, especially one already considered and approved by the United States Supreme Court. *White v. Regester,* supra.

Galveston County has had a two-member legislative district since 1960. However, the 1970 census showed that this district had a population of approximately 170,000; 20,000 more than would properly be included in the district. Adjustments had to be made.

Judicial notice can and should be given to items ignored by the majority. First, the Reapportionment Act for the Texas House of Representatives passed by the 62nd Texas Legislature was declared unconstitutional by the Texas Supreme Court because that plan failed to comply with Article III, Section 26 of the Texas Contitution relating to the cutting of county lines in designing districts. *Smith v. Craddick,* (471 SW2d 375). The Court found the plan unnecessarily cut the boundaries of 33 counties and further found that this situation could be rectified without violating the federal requirement of equal representation.

The plan subsequently adopted by the Legislative Redistricting Board cut only 19 counties. (Exhibit B) Reducing the number of counties whose boundaries

were cut clearly had to be a major consideration. As Representative Harris testified at trial the bill passed by the Legislature and declared unconstitutional placed the 20,000 surplus population in a district comprised of Chambers County and part of Jefferson County and Liberty County. The plan of the Redistricting Board placed the 20,000 surplus population with a part of Harris and all of Chambers County. In this plan Liberty County was not cut in any way.

Additionally, Plaintiffs' pleadings at no time reflected a challenge of racial gerrymandering to District 17, but rather at all times attached the use of the multi-member district, which challenge was withdrawn at trial by Plaintiff for complete lack of evidence.

> "The bare opinion of Represenative Harris in light of the extreme geographical obstacles of nature faced by the Board in its efforts belies the efficacy of a rush to judgment. Much more must be shown by plaintiffs to support their challenge to the good faith efforts of the Legislative Redistricting Board. The dearth of evidence presented does not overcome the presumption of the constitution ality of the Board's action and compel change." (122A)

III

THE PREEMPTION OF THE LEGISLATIVE FUNCTION OF REAPPORTIONMENT BY THE JUDICIARY IS UNWARRANTED AND IMPROPER WHEN THE LEGISLATURE ITSELF HAS

NOT BEEN GIVEN THE OPPORTUNITY TO COMPLY WITH A DIRECTIVE OF THE COURT, NO IRREPARABLE HARM IS SHOWN, AND WHEN THE REMEDIAL PLANS IMPOSED ARE SUMMARILY CHOSEN FROM AMONG A NUMBER OF ALTERNATIVES OFFERED WITHOUT ANY FINDINGS RELATING TO THE STANDARDS UTILIZED OR ANY REASONS FOR THE CHOICE.

Without conceding the error of the lower court's holdings, the court below incorrectly ordered the implementation of specific single-member plans not only because the Texas Legislature should have been given the opportunity to correct a newly found unconstitutional situation but also because the court was given a number of proposed plans by both sides and other interested persons and selected a set of plans for reasons unknown and unstated.

The Federal Courts have traditionally, and correctly, been very reluctant to enter into the political questions of redistricting, and have done so only when no other rational course seemed available. Indeed, this same panel Court found the entire redistricting plan for the Texas House of Representatives to be unconstitutional, but suggested that it would allow the Legislature to remedy that fact itself, and allowed the 1972 elections to proceed under the Legislative plan. The majority in this case has allowed the Texas Legislature to cure the

unconstitutional situation it found in District 17. There is no claim that the Legislature has acted in bad faith in not redistricting the seven multi-member districts that are now in controversy, since indeed the United States Supreme Court had never, since Reconstruction, or otherwise, declared any multi-member district to be unconstitutional up until the Summer of 1973, after the Texas Legislature was out of session. The record was replete with evidence that the Texas Legislature would most likely have passed single-member districts for some of those districts in question but for procedure problems. (128A)

Claims of irreparable harm ensuing from failure of the Court to impose single-member districts for the next elections are contradicted by the fact that Plaintiffs in the initial stage of this litigation chose to limit their challenge of multi-member districts to only Dallas and Bexar Counties, ignoring the remaining nine multi-member districts. Of course, the grant of a stay by this Honorable Court on the implementation of the lower court's order completely voids any argument that the legislature should not now be given an opportunity by this Court to exercise its proper function if single-member districts are unconstitutionally required.

The action of the majority of the lower court should not be allowed to stand for another more compelling reason. Pursuant to the pre-trial order of the court non-parties to the litigation were allowed to submit

sealed single-member district plans to the court in the event the court found any or all of the districts unconstitutional. Further after announcing its holdings as to the constitutionality of the districts, the court convened on January 28, 1974, to receive testimony and plans from the parties. All of the various plantiffs offered plans as did the defendants. As pointed out by Judge Wood, the plans for five of the districts offered by defendants were approved and advocated by a majority, if not all, members of the respective delegations. (129A) After approximately five hours of testimony, the Court took a five-minute recess, and on returning to the bench uniformly adopted plans offered by Plaintiffs (excluding those offered by Plaintiffs representing the Republican Party). Neither in open court nor in their written opinion did the Court justify their choice.

The action of the majority is in clear opposition to the dictates of the Supreme Court regarding judicially imposed reapportionment plans:

> ". . . that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds v. Simms,* 377 U.S. 533, at 586.
>
> "Just as a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State, as expressed

in statutory and constitutional provisions, or in the reapportionment plans proposed by the state legislature, ..." *White v. Weiser,* 412 U.S. 783 (1973) at page 795.

> "The court entered judgment without expressly putting aside on supportable grounds the alternative of creating single-member districts in the ghetto and leaving the district otherwise intact, as well as the possibility that the Fourteenth Amendment could be satisfied by the simple requirement that some of the at-large candidates each year must reside in the ghetto, ..."
>
> "The remedial powers of an equity court must be adequate to the task, but they are not unlimited. Here the District Court erred in so broadly brushing aside state apportionment policy without solid constitutional or equitable grounds for doing so." *Whitcomb,* supra, pages 160, 161.

CONCLUSION

For the foregoing reasons, it is requested that the Court note probable jurisdiction of this case and set it for argument and plenary consideration.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

LARRY F. YORK
First Assistant Attorney General

ELIZABETH B. LEVATINO
Special Assistant Attorney General

P.O. Box 12548
Capitol Station
Austin, Texas 78711

CERTIFICATE OF SERVICE

I, Larry F. York, First Assistant Attorney General of Texas, as of counsel for Defendants herein, hereby certify that true and correct copies of the above foregoing Jurisdictional Statement and separately bound Appendix have been served upon opposing counsel by placing copies in the mail, prepaid, to Mr. Phillip Crawford, Attorney at Law, P.O. Box 6277, Austin, Texas 78762, attorney for Plaintiff and Intervenor Chapman; Mr. Dave Richards, Attorney at Law, 600 West 7th Street, Austin, Texas 78701, attorney for Plaintiff Regester and Intervenors Wright, et al.; Mr. R. James George, Jr., Attorney at Law, P.O. Box 98, Austin, Texas 78767, attorney for Republican Party; Mr. Norman M. Bonner, attorney for Plaintiff Gaskin, at Suite 838, Baker Bldg., 7th and Houston, Fort Worth, Texas, 76102; Mr. Don Gladden, attorney for Plaintiff Escalante, at 702 Burk Burnett Building, Fort Worth, Texas, 76101; and Mr. George Korbel, attorney for Mexican American Legal Defense Education Fund, 501 Petroleum Commerce Building, 201 North St. Mary's Street, San Antonio, Texas 78205.

Witness my hand this ____ day of March, 1974

LARRY F. YORK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Curtis Graves, et al.	x	
	x	
V.	x	Civil Action
	x	No. A-71-CA-142
Ben Barnes, et al.	x	
Diana Regester, et al.	x	
	x	
V.	x	Civil Action
	x	No. A-71-CA-143
Bob Bullock, et al.	x	
Johnny Marriott, et al.	x	
	x	
V.	x	Civil Action
	x	No. A-71-CA-144
Preston Smith, et al.	x	
Van Henry Archer	x	
	x	
V.	x	Civil Action
	x	No. A-71-CA-145
Preston Smith, et al.	x	
Frank A. Escalante, et al.	x	
	x	
V.	x	Civil Action
	x	No. A-73-CA-115
Mark White, et al.	x	
James Gaskin, et al.	x	
	x	
V.	x	Civil Action
	x	No. A-73-CA-146
Mark White, et al.	x	
Wanda L. Chapman, et al.	x	
	x	
V.	x	Civil Action
	x	No. A-73-CA-155
Mark W. White, Jr., et al.	x	

NOTICE OF APPEAL

Notice is hereby given that Dolph Briscoe and Mark W. White, Jr., Defendants in the above-named civil actions, hereby appeal to the United States Supreme Court from the Memorandum Opinion and Order entered in this action on the 28th day of January, 1974, and the Order issuing mandate entered in this action on the 28th day of January, 1974.

DATED: January 30, 1974

JOHN L. HILL
Attorney General of Texas

LARRY F. YORK
First Assistant Attorney General

ELIZABETH LEVATINO
Special Assistant Attorney General

P. O. Box 12548, Capitol Station
Austin, Texas 78711

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Larry F. York, First Assistant Attorney General of Texas, attorney for Defendants Dolph Briscoe and Mark W. White, Jr., hereby certify that the above and foregoing Notice of Appeal has been served upon Plaintiffs and Plaintiff-intervenors by depositing a copy of

the same, certified mail, return receipt requested, addressed to the attorneys whose names and addresses appear below on this the 30th day of January, 1974.

Norman M. Bonner, Esq.
Attorney at Law
Suite 838
7th & Houston
Fort Worth, Texas 76102

Don Gladden, Esq.
Attorney at Law
702 Burk Burnett Bldg.
Fort Worth, Texas 76101

Phillip Crawford, Esq.
Attorney at Law
P. O. Box 6277
Austin, Texas 78762

Dave Richards, Esq.
Attorney at Law
600 West 7th Street
Austin, Texas 78701

George Korbel, Esq.
Attorney at Law
501 Petroleum Commerce Bldg.
201 N. St. Mary's Street
San Antonio, Texas 78205

R. James George, Jr., Esq.
Attorney at Law
P. O. Box 98
Austin, Texas 78767

LARRY F. YORK